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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/367,636	05/25/2000	JOSE ANTONIO R. CONDADO	5063	4589
7590	08/03/2004			
			EXAMINER	
			KENNEDY, SHARON E	
		ART UNIT	PAPER NUMBER	
		3762		
DATE MAILED: 08/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/367,636	CONDADO, JOSE ANTONIO R. <i>CA</i>
Examiner	Art Unit	
Sharon Kennedy	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 29 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 1, 3-56 is/are pending in the application.  
4a) Of the above claim(s) 3,25,48 and 50-56 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,4-17,19-24,26-31,33-35,38-43,45-47 and 49 is/are rejected.

7)  Claim(s) 18,32,36,37 and 44 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 29 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on August 29, 2003 have been approved.

#### ***Election/Restrictions***

Applicant should note that this application contains so many embodiments that it is burdensome to examine all the claims. A further restriction may be applied at a later date if the burden continues to multiply.

#### ***Claim Rejections - 35 USC § 102***

Claims 1, 4, 13, 15, 16, 17, 19, 24, 26, 27, 28, 29 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris, US 845,249. See especially figures 4-7 for close-ups of the distal end bulks and discharge orifices 11 which anticipate the claimed "at least one conduit" formed on the bulk. These claims are still so broad they read on an ancient syringe patent. Regarding claims reciting intended uses, such as claims 15, 24, 49 and others, these are not accorded much patentable weight in the absence of the recitation of distinguishing structure.

Claims 1, 6, 7-10, 13-15, 19-24, 26-29, 30, 31, 33, 34, 35, 38, 42, 43, 45, 49 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Boussignac et al., US 5,378,237. See especially figure 3. The bulk is formed by sleeve 11. The guide wire lumen is the central lumen of the catheter. See also column 3, lines 29-34. Regarding

the radiopaque marker, see column 5, lines 17-18. The marker is misidentified as reference numeral 23. The real marker is likely adjacent reference numeral 13, in the center of the distal end, and is unlabeled. The balloon comprises walls 8 and 9. Note the "microtube" at column 2, line 13, for example. Regarding claim 13, the interior conduit is the central guide wire lumen, the exterior conduit for providing the perfusion is shown having the perfusion holes 3, etc. Regarding claim 19, clearly the exterior conduit is in segments, having segment 10 and the distal and more proximal segments. Regarding claim 38, all balloon catheters have valves to retain fluid within the balloon, even if not specifically described.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Crocker, US 5,368,566. Note the two balloons, one enveloping the other, and the perfusion hole (lumen 24) extending there through.

***Claim Rejections - 35 USC § 103***

Claims 5, 39-41, 46, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boussignac '237. Claim 5 merely recites a preferred size for the bulk and is obvious since the selection thereof is merely dependent on patient need. Claims 39 and 40 simply recite the types of valves common in balloon catheters and it would be obvious to one of ordinary skill in the art to select any valve in the absence of criticality. Regarding claim 41, again, monitoring the pressure of a balloon in a balloon catheter is routine. Regarding claims 46 and 47, applicant has merely claimed guide wires without claiming any structure in the catheter therefor. Accordingly, it would be

obvious to one of ordinary skill in the art to supply the Boussignac catheter with multiple guidewires so that the surgeon may select the most appropriate one.

***Allowable Subject Matter***

Claims 18, 32, 36, 37 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 703/305-0154. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703/308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

*Sharon Kennedy*  
Sharon Kennedy  
Primary Examiner  
Art Unit 3762

Sek